IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

GENESIS SCHOOL, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 23AC-CC02551
	)	
MISSOURI CHARTER PUBLIC SCHOOL COMMISSION, et al.,	)	
	)	
	)	
Defendants.	)	

JUDGMENT

This case arises from Plaintiff's Verified Petition filed under RSMo §536.150, seeking relief from Defendants' actions related to the revocation of Genesis School, Inc.'s school charter. On June 9, 2023, the Court held a bench trial where the parties presented stipulations, live testimony, and documentary evidence. Plaintiff Genesis School, Inc. was represented by attorneys Charles Hatfield and Alixandra Cossette of Stinson LLP. Defendant Missouri Charter Public School Commission was represented by Assistant Attorney General Ali Skeens. Defendant Missouri State Board of Education was represented by Assistant Attorney General Clayton Weems. Based on the evidence presented by the parties, arguments of counsel, and the applicable law, the Court makes the following findings of fact and conclusions of law and enters its Judgment in favor of Plaintiff Genesis School, Inc.

I. Findings of Fact

Plaintiff Genesis School, Inc. ("Genesis") is a non-profit corporation and charter public school operating in Kansas City, Missouri. J. Stip. ¶ 1. Genesis serves students in Kindergarten through Eighth grade. J. Stip. ¶ 2. Genesis' Executive Director is Kevin Foster, who testified at the trial. Defendant Missouri Charter Public School Commission (the "Commission") is a state commission that acts as a sponsor for charter public schools. J. Stip. ¶ 3. The Commission's Executive Director is Robbyn Wahby, who testified at the trial. Defendant Missouri State Board of Education (the "State Board" or "Board") is charged with the supervision of instruction in the public schools and is the head of the Missouri Department of Elementary and Secondary Education ("DESE"). J. Stip. ¶ 4. Margie Vandeven is the Commissioner of Education and the

chief administrative officer for the Board. J. Stip. ¶ 5. No witnesses were called by the State Board of Education at trial.

Charter schools are public schools authorized by the General Assembly. They must be not for profit entities, as Genesis is. A charter school must have a sponsor, which is responsible for ensuring the charter school complies with all applicable statutes and regulations and with any other policies the sponsor may adopt. *See* J. Stip. ¶ 6. Sponsors enter into contracts (also known as charters) with the schools. Genesis has had at least three different sponsors. It was sponsored by the University of Missouri-Kansas City until that University decided to stop sponsoring charter schools. Then, Genesis chose to be sponsored by the University of Missouri-Columbia ("MU"). *See* J. Stip. ¶ 7.

In May of 2020, MU renewed Genesis' charter. When MU did so, the charter had to be approved by the Defendant Board, which reviewed Genesis' academic performance at that time and authorized the renewal. The charter the Board approved was scheduled to run through June of 2025. In January of 2022, the State Board transferred three of MU's sponsored charter schools, including Genesis, to the Defendant Commission. *See* J. Stip. ¶ 8.

After the transfer, the Commission and Genesis voluntarily entered into a new contract/charter. *See* J. Stip. ¶ 9. The term of that contract/charter is July 1, 2022 through June 30, 2025. The contract/charter:

- Replaced the old MU charter.
- Included performance goals for Genesis to attain in each school year beginning with the 2023 school year.
- Contained a progressive notification system if the Commission felt Genesis was not performing.
- Spelled out specific reasons that the Commission could revoke Genesis' charter, including (as most relevant here) failure to comply with any mandated corrective action by the Commission.

See Ex. JS-1.

Less than three months after Genesis signed its performance contract with the Commission, the Commission sent a letter notifying Genesis that the Commission may revoke its charter. Ex. P-17. That letter was followed up on December 15, 2022 by a letter notifying Genesis that the Commission intended to revoke its charter. Ex. P-18. Genesis sent a letter to the

Commission requesting a hearing. That hearing was held on January 30, 2023. J. Stip. ¶ 13. Genesis requested mediation, as contemplated by the charter, but the commission declined. At the time of the revocation:

- The Commission had not notified Genesis that the Commission considered Genesis to be in breach of the contract/charter. Ex. P-10 (Wahby Tr. 41:8-19).
- The Commission had not mandated any corrective action on the part of Genesis.
- Genesis was not in breach of any of the terms of the contract, nor had the Commission determined that it was.

The Commission is required by statute to adopt a policy related to revocation and it had done so. That policy is in evidence as Exhibit JS-2. That policy does not include a statutory requirement that the Commission revoke a charter if the charter school's academic performance is below that of the resident district for three of the last four years. *See* § 160.405.8(1)(b), RSMo; Ex. JS-2. In fact, nothing in the policy allows the staff to recommend revocation based on any specific number of years of academic performance or for any comparison to the resident school district or otherwise. *See* Ex. JS-2.

After the Commission held its hearing, the Commission met again and—by resolution—revoked Genesis' charter. J. Stip. ¶ 14; Ex. JS-3. Although that resolution contained three "findings of fact," the wording of the resolution and testimony from the Commission's Executive Director, make clear that the resolution relied on one ground—that there was clear evidence of underperformance as demonstrated in the school's Annual Performance Report ("APR") in three of the last four school years *See* Ex. JS-3; Ex. P-10 (Wahby Tr. 40:7-19).

APRs are published by the Department of Education. *See* § 160.405.15, RSMo. At the time of the revocation, the four immediately preceding school years would have been 2022, 2021, 2020, and 2019 (alternatively, because 2022 Annual Performance Reports had not been released at the time of the hearing, the preceding school years would have been 2021, 2020, 2019, and 2018). But there were no useable Annual Performance Reports for school years 2021 and 2020. J. Stip. ¶ ¶ 20 and 21.; Ex. P-10 (Wahby Tr. 110:24-111:6). As a result, there were not APRs for three of the last four school years (regardless of which four years) at the time the Commission revoked Genesis' charter. The Court finds that the statement of the chief administrator of the State Board—Margie Vandeven—is correct. *See* Ex. JS-5. The Commission

did not in fact rely on the Annual Performance Reports for three of the last four years because there is no way it could have done so.

The Commission does not claim that it revoked Genesis' charter for any reason *other than* the reason in statute—that there was clear evidence of underperformance as evidenced by Genesis' APR results in three of the last four school years. Ex. P-10 (Wahby Tr. 131:25-132:9). In fact, the Commission's Executive Director admits that the revocation was not based on the Commission's policies or on the charter/contract. *Id.* Nevertheless, Genesis put forward evidence to show that there were no other grounds for revocation and the Court finds any remaining facts concerning the revocation in favor of Genesis.

After the Commission made its decision to revoke Genesis' charter, Genesis appealed to the State Board of Education. J. Stip. ¶ 16. At its April 24, 2023, meeting, the chief administrative officer admitted that there were deficiencies in the Commission's process, including the fact that the Commission had not actually relied on the Annual Performance Reports in three of the last four years. *See* Ex. JS-5. The Board knew the Commission process failed to meet the necessary standards, yet the Board did not undertake any objective review itself but instead essentially ratified the revocation. Remarkably, the Board considered no data and relied on no standards or criteria to make its decision. Ex. P-9 (Sireno Tr. 21:16-23; 47:5-22). The Board passed no resolution and the Board offered this Court no evidence concerning its decision other than the official minutes, which state that there was a motion, which was seconded and adopted. Ex. JS-4.

Although witnesses testified that both Genesis and the Commission provided some information to DESE in anticipation of the State Board meeting, there was no evidence that the State Board ever considered—or even saw—that information. Nor was the Court presented with any evidence about what information the Commission or Genesis submitted to DESE. Exhibit V is a cover letter from the Commission's Executive Director to the Commissioner of Education, but it appears to have had attachments, which were not put into evidence. None of the information provided to the State Board by Genesis was put into evidence.

II. Conclusions of Law

This is a "noncontested" case because there was no "formal proceeding[] or hearing[] before an administrative body" thus, there was no agency record created for this Court to review. *BG Olive & Graeser, LLC v. City of Creve Coeur,* 658 S.W.3d 44, 47 (Mo. 2022), *reh'g denied*

(Jan. 31, 2023). Noncontested cases are reviewed under Section 536.150, RSMo, which requires this Court to "conduct a trial *de novo* to develop its own record and determine facts." *Id.* The issue is whether the agency action "in view of the facts as they appear to the court, is unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion." *Id.*

The Court now in turn considers the actions of the Commission and the State Board of Education. The Commission's decision to revoke Genesis' charter was unlawful. The State Board's decision to revoke Genesis' charter was unlawful and arbitrary.

A. The Missouri Charter Public School Commission's action was unlawful.

"In accordance with section 160.400.11(3), RSMo, the sponsor executes a charter contract with each charter school that articulates the rights and responsibilities of each party." § 160.400.11(3), RSMo; 5 CSR 20-100.260(3); Ex. JS-6. The legislature established a five-year term for charters and the contract here reflects that term. § 160.405.1(9), RSMo. This contract, therefore, gave Genesis the right to be sponsored by the Commission (and not be revoked) unless the Commission had followed the promised progressive notification process. *See* Ex. JS-1. That process—which required notification of any deficiencies—was not followed and the Commission violated Genesis rights as outlined in the contract. *See* Ex. JS-1.

But even had the notification process been followed, the Commission had no basis to revoke the charter. The reasons to revoke a charter are specified by statute (or perhaps in charter contracts) and revoking for any other reason is illegal. *See* § 160.405.8(1)(b), RSMo. The Commission did not have a basis either in statute or contract to revoke Genesis charter.

1. The Commission's action to revoke Genesis' charter based on underperformance as compared to the Kansas City School District was unlawful.

The Commission says it revoked the charter due to Genesis' APR scores being below the Kansas City School District in three of the last four years in which there is available data. Ex. P-10 (Wahby Tr. 40:7-19). The statute contains grounds for revocation and nothing in the statute specifically allows revocation on that ground. Section 160.405.8(1)(a) requires intervention (which may include revocation) if the State Board has found such underperformance as compared to the resident district *and* has designated the charter school as persistently lowest

achieving. The Parties agree that was not the case for Genesis. *See* Ex. P-10 (Wahby Tr. 80:9-14).

But, the statute also requires a sponsor to have a *policy* that mandates revocation if there is clear evidence of underperformance as demonstrated in the charter school's annual performance report in three of the last four years, although it does not say the sponsor should compare performance to the resident district. § 160.405.8(1)(b), RSMo. That statutory language, then, seems to envision that the comparison of APRs *might* be with the resident district, or with peer schools, or even with some other schools that might be mandated by the sponsor or agreed to by the sponsor. Although the Commission's Executive Director was not convincing on which statute was relied upon, the Commission resolution cites this latter statute as the authority to revoke. Ex. JS-3. Although the statute requires a policy, the Commission does not have one. Therefore, the statute does not authorize the Commission to revoke on their stated basis. *See State ex rel. School Dist. v. Williamson,* 141 S.W.3d 418, 425 (Mo. App. 2004)("The Act clearly requires a statement of the term, which requirement Westport ignored when it submitted its proposed charter. Nor does the Act contemplate that any potential sponsor actually be required to become a sponsor let alone, we think, be committed to a term to which it has not expressly agreed.").

Assuming, however, that the statute authorizes the Commission to revoke based on this reason (rather than requiring a policy that specifies the grounds for revocation), there is still a matter of statutory interpretation. The Commission said it revoked Genesis' charter for the reason listed in Section 160.405.8(b)a, RSMo— "clear evidence of underperformance as demonstrated in the charter school's annual performance report in three of the last four school years." § 160.405.8(b)a, RSMo; Ex. JS-3; Ex. P-10 (Wahby Tr. 131:25-132:9). The Commission claims that it was then authorized to find that "clear evidence" by comparing Genesis only to the Kansas City School District (rather than other schools) but more critically, the Commission argues that if there is not available data for four consecutive years, the statute allows it to use three of four school years for which there is available data. Ex. P-10 (Wahby Tr. 110:24-111:16). In this case that meant going back and looking at six years of data. *Id.* On the other hand, Genesis argues that the word "last" in the statute means that a sponsor may only use data from the most recent four preceding years in order.

The Court agrees with Genesis' interpretation of the statute because the use of the word "last" is clear and dispositive. It is the role of this Court to "effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language." *Bateman v. Rinehart,* 391 S.W.3d 441, 446 (Mo. banc 2013)(quotation and citation omitted). "When the words are clear, there is nothing to construe beyond applying the plain meaning of the law." *Id.* The word "last" is defined as "next before the present: most recent." https://www.merriam-webster.com/dictionary/last. So, three of the *last* four years must mean the four years immediately preceding the school year in which the charter is to be revoked. The Commission is clear that it reads the statute to *mean* three of the last four years *for which data was available.* Ex. P-10 (Wahby Tr. 110:24-111:16). The Commission's witness urged the Court to adopt that interpretation because, she claimed, it is common for there not to be usable data for years at a time and there was not here due to COVID. The Commission's argument is one they should make to the legislature. This Court is bound by the words in the statute and cannot change those words even if the Court disliked the policy result.

The Commission's position boldly requires the Court to insert the words "for which data (or reports) are available" into the statute. The Court is, of course "without authority to supply or insert words in a statute." *Wolfson v. Cheleist,* 278 S.W.2d 39, 43 (Mo. App. 1955). To adopt the Commission's interpretation of the statute would alternatively render the word "last" meaningless, which is forbidden by the canons of statutory construction. "In interpreting a statute, [the court is] required to give meaning to each word, clause, and section[.] *Beck v. Beck,* 90 S.W.3d 509, 511 (Mo. App. 2002). There is really no factual dispute that there were only Annual Performance Reports for—at most—two of the last four years. J. Stip. ¶ ¶ 20 and 21. Genesis' Executive Director testified, without objection, that Annual Performance Reports did not exist for two of the last four years. *See also* Ex. P-10 (Wahby Tr. 110:24-111:16). It should have been a straightforward matter for the Defendants to rebut that evidence by simply introducing the Annual Performance Reports—or at least the ones on which they rely. But the Defendants introduced no APRs into evidence. Indeed, the main exhibit the Commission offered regarding academic performance, Exhibit S, supports Genesis. The first line of data in that exhibit is labeled APR percentage. It shows N/A for the years 2020 and 2021 and it is blank for the year 2022. Ex. S. Nor does the text of Exhibit S contain any information for other schools

matching the first line for Genesis, "APR percentage," so there is no way to make a comparison. Therefore, there is no evidence to support the Commission's decision, which was illegal.

2. The Commission breached its contract with Genesis.

A charter contract articulates the "right and responsibilities of each party regarding...performance consequences based on the annual performance report, and other materials. 5 CSR 20-100.260(3); Ex. JS-6. That regulation also requires "A. The charter contract shall define—1. The standards for . . . revocation." *Id.* Regulations have the "force and effect of law and are therefore binding on the courts." *Dilts v. Director of Revenue,* 208 S.W.3d 299, 302 (Mo. App. 2006). As a result, Genesis had a right to the progressive notification system specified in the contract and to be given an opportunity to cure any deficiencies prior to the Commission revoking Genesis' charter. The Commission was also required to define the standards for revocation.

> As part of its monitoring, the Commission will follow a progressive system of notification and calls for corrective action on the part of GSI. Provided that the Commission has followed the progressive notification system and GSI has been afforded the opportunity to address any breaches or failures, the Commission may decide not to renew or revoke this charter if GSI breaches this Performance Contract, fails to meet performance measures GSI outlined in its renewal application, or fails to adhere to mandated corrective actions. Corrective actions will be required if graduation rates at GSI fall below 75% (for charter schools with a high school), the school's annual performance results are—in three of the last four years—below the resident district's, and the school is identified as persistently lowest achieving.

Ex. JS-1.

The Commission breached its contract with Genesis because it did not follow the progressive notification system. Prior to revocation, the Commission was contractually obligated to provide progressive notification to Genesis of its breaches and failures *and* provide Genesis an opportunity to cure those breaches and failures. *Id.* Genesis never received any progressive notices, and even if it had, it was not afforded any opportunity to cure any breach or failure. The General Assembly envisioned that charter schools be given a chance to operate and meet the needs of the community they serve—"the legislature was concerned that this experiment get a valid chance." *See* 141 S.W.3d at 424. The Commission's contract reflects that legislative intent, but, unfortunately, the Commission failed to follow through on its promise.

The Commission also breached its contract when it revoked Genesis using three of the last four years of available data. The performance contract contains certain standards for revocation and the Commission must follow them. The Commission could have negotiated different standards, but they must follow the ones they agreed to. The contract allows the Commission to revoke Genesis' charter only if Genesis breaches the contract, fails to meet performance measures outlined in the renewal application, or fails to adhere to mandated corrective actions. Ex. JS-1. The Commission's Executive Director testified that Genesis' charter was not revoked for any reason listed in the contract. *See also* Ex. P-10 (Wahby Tr. 40:7-19). The Commission breached its contract with Genesis, because, as admitted, the Commission's action to revoke Genesis' charter was not for any contractually allowed reason.

B. The State Board of Education's action to revoke Genesis' charter was unlawful and arbitrary.

Genesis has also appealed the decision of the State Board. The statute allows a charter school to appeal a revocation to the Board. § 160.405.8(4), RSMo. In this case, the State Board voted to "revoke" the charter rather than to uphold an appeal. Ex. JS-4. Of course, because the Commission's decision was unlawful, the appeal should have never been at the State Board. Regardless of whether the Court is considering a ruling on an appeal or on the Board's independent authority to revoke (which it does not appear to have absent a lawful revocation by a sponsor), the Court finds that the State Board acted unlawfully and arbitrarily.

The Court has before it testimony of the State Board of Education that it did not consider any data when revoking Genesis' charter nor does it have any standards or guidelines for charter revocation. *See* Ex. P-9 (Sireno Tr. 21:16-23; 28:9-18). The State Board put on no evidence at trial to contradict this. Because the State Board considered no evidence and had no standards or guidelines, its decision to revoke Genesis' charter, as a matter of law, is arbitrary. *See* Ex. P-9 (Sireno Tr. 21:16-23; 28:9-18; 47:5-22).

A decision of an administrative agency is arbitrary if the decision is "not based on substantial evidence." *Bd. of Educ. of City of St. Louis v. Missouri State Bd. of Educ.*, 271 S.W.3d 1, 11 (Mo. banc 2008). "Whether an action is arbitrary focuses on whether an agency had a rational basis for its decision." *Id.* To avoid being arbitrary, "an agency's decision must be made using some kind of objective data rather than mere surmise, guesswork, or 'gut feeling.'"

Id. The agency "must not act in a totally subjective manner without any guidelines or criteria." *Id.*

Although the State Board attempted at trial to imply that it had before it data from the Commission and Genesis, the Court has no evidence in the record that the members of the State Board ever received such information or considered it. Moreover, even if the Court was inclined to review such data, that data is not part of the record as no party offered it at trial.

But, assuming that such information was in front of the State Board and in the record, the State Board's decision would still be unlawful if the Board relied on the information from the Commission, then the Board revoked Genesis' charter for the same unlawful reason as the Commission. In other words, the Board similarly did not have data for three of the last four years upon which it could base its decision to uphold the Commission's revocation *or* make its own decision. The State Board's decision was arbitrary and unlawful.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Defendant Missouri Charter Public School Commission's decision to revoke Genesis' charter was unlawful and is reversed;
2. Defendant Missouri State Board of Education's decision to revoke Genesis' charter was unlawful and arbitrary and is reversed;
3. Plaintiff Genesis School, Inc.'s charter is reinstated; and
4. Defendants and all those acting in concert with them are enjoined from taking any actions based on the Defendants' decision to revoke the Genesis charter or refraining from taking any actions they would normal take absent the unlawful decision.

IT IS SO ORDERED.

The Honorable S. Cotton Walker
Circuit Judge, Division III
19th Judicial Circuit, State of Missouri

Dated: June 21, 2023